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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,573	09/26/2003	Seitaro Kimura	Q77480	2325

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EXAMINER	
MOSSER, ROBERT E	

ART UNIT	PAPER NUMBER
3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/670,573	KIMURA, SEITARO	
	Examiner	Art Unit	
	ROBERT MOSSER	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 March 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1** through **4** are rejected under 35 U.S.C. 102(b) as being anticipated by Nakagawa et al (US 6,168,519).

Nakagawa teaches game including:

a virtual start time determination means for deciding the virtual start time of a plurality of matches (Figure 2, Col 13:46-52);

a related match selection means for selecting a match from the plurality of matches based the match virtual start time and the relation of a main match start time (Col 13:29-40);

match simulation means for simulating a match (Figure 13);

event time arrival monitoring means for recognizing the arrival of an event time during the execution of a match (Element ST610 ST670, Figure 13, Col 14:49-55);

an event content outputting means for outputting event content at the event time during the execution of the main match (Element ST680, Figure 13, Col 14:49-55); and

event replay/storage data for reproducing and displaying events occurring in a match as event content (Element ST690, Figure 13, Col 14:49-55).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **1-9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa et al (US 6,168,519) in view of Sabaliauskas (US 5,359,510).

Claims **1-4**: Nakagawa teaches game including:

a virtual start time determination means for deciding the virtual start time of a plurality of matches (Nakagawa Figure 2, Col 13:46-52);

a related match selection means for selecting a match from the plurality of matches based the match virtual start time and the relation of a main match start time (Nakagawa Col 13:29-40);

match simulation means for simulating a match (Nakagawa Figure 13);

event time arrival monitoring means for recognizing the arrival of an event time during the execution of a match (Nakagawa Element ST610 ST670, Figure 13, Col 14:49-55);

an event content outputting means for outputting event content at the event time during the execution of the main match (Nakagawa Element ST680, Figure 13, Col 14:49-55); and

event replay/storage data for reproducing and displaying events occurring in a match as event content (Nakagawa Element ST690, Figure 13, Col 14:49-55).

Nakagawa however is arguably silent regarding explicitly teaching that an event time includes at least one of a virtual time and a virtual date and further the incorporation of a competition ladder that would decide the next plurality of matches based on the outcomes of previous matches according to team standings. These features however are taught in the tournament management system of Sabaliauskas (*Sabaliauskas* Figures 9-13, 54-55 Col 1:24-38). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the tournament management features of Sabaliauskas into the invention of Nakagawa in order to

provide for multiplayer competition enabling a plurality of players to compete in a tournament style environment.

Claims **5** and **9**: Nakagawa teaches the determination of game matches based on information stored by the game storage database (media) in at least so much as Nakagawa stores a plurality of player selectable teams and actions for use during the competition (*Nakagawa* Figures 3, 6, 8, 12).

Claims **6-7**: Sabaliauskas teaches the use of competition ladders for the determination of a plurality of subsequent matches based on the outcomes of previous matches and reflect of teams respective standings (*Sabaliauskas* Figures 9-13, 54-55 Col 1:24-38).

Claims **8**: : Nakagawa teaches the determination of virtual game time (*Nakagawa* ST530) to the extent that the time is specified as night or day while Sabaliauskas teaches the use of time and location to determine the placement of an event (*Sabaliauskas* Figure 55).

Response to Arguments

Applicant's arguments filed March 11th, 2008 have been fully considered but they are not persuasive.

Commencing on page 6 of the remarks dated March 11th, 2008 the Applicant references mean-plus-function type limitations incorporated within their pending claims

and suggests that the applied art fails to anticipate the pending claims for not corresponding to the related means as set forth in their specification. In support of the defined means the applicant directs attention to various application figures. The Applicant's proposition that the application drawings present a basis for defining equivalent means to those presently claimed however is improper as both the drawings and the references within the specification thereto fail to identify or otherwise correlate the claimed means to subject matter demonstrated by the figures. The means for the disclosed language as set forth is understood to be software enacted on a computer such as utilized by Nakagawa et al. In addition to the above the applicant appears to be attempting to define the previously presented claim language to be of a narrower scope then supported by their specification as originally filed. Specifically the applicant's presentation of terms including definitions of said terms in their remarks dated March 11th, 2008 are not reflected within the specification as originally filed. In direct example of the above the Applicant identifies the numeric shown in figure 4 of the Application to identify a data and time further that the identified day and time would constitute a virtual start time however their no support within the specification as originally filed that would support this assertion. If the Applicant intends for these proposed definitions to carry effect within the application, the Applicant must amend their specification to present these terms with the newly proposed definitions and further present along therewith a clear identification of support for these proposed definitions within their specification as originally filed to avoid the characterization of such amendments as new matter.

Returning to the Applicants discussion of means and determination of structure corresponding thereto, the Applicant proposes on page 8 that the corresponding structure of a virtual start time decider corresponds to the function of determining a start time. The Applicant's arguments here appear to attempt to provide a point of proposed distinction premised on the establishment of a non-equivalent means. However as discussed above the Applicant does not explicitly identify the structure of the particular means (ex a random number generator) and accordingly the means has been interpreted in view of the remaining disclosure as being software enacted on a computer system. The preceding applies to additional proposed delineation of the claimed means as presented present through at least pages 8-11.

On page 11 the Applicant argues that the prior art of Nakagawa et al fails to teach the equivalent claimed function of determining a plurality of virtual start times. While it is first noted that the Applicant's "virtual start time" is not bound to any real measurement of time, in a similar manner to the prior art of Nakagawa et al. Yet despite this and the Applicant's recognition that the prior art of Nakagawa et al recognizes the selection of time for matches according to daytime or nighttime the Applicant argues that this selection is not a selection of a time per se. There however is no limitation present within the pending claims that would specify the required precision of the time selection hence as presented the selection of a daytime or nighttime meets the claim language as presented.

Continuing on the Applicant argues that the selection of a time as presented by the prior art of Nakagawa et al fails to address this selection of a start time for a plurality

of matches. Nakagawa et al teaches the selection of a time (daytime or nighttime) for each match and enabling the participation by the player in a plurality of matches (tournament) and accordingly as each match in a plurality of matches has an assigned time it is unclear in what manner the Applicant believes that the selection of a start time for a match would not apply to a plurality of matches as argued.

On pages 12 the Applicant argues that the prior art does not select a match based on matches taking place at the same time as the main match however as earlier noted by the Applicant the prior art of Nakagawa et al teaches a game system based on human to computer interaction rather then a schedule that may be subject to a plurality of participants hence the main match time would always be selected match time because the game play is dependent on the player interaction (Nakagawa Figures 12-13). The Applicant arguments with regards to this feature suggest an interpretation wherein the selection of a main match from a plurality of matches taking place at the same time as the main match would otherwise infer that the plurality of matches not selected for the main match would necessarily take place. However the claim language presently does not necessarily provide for the actual execution of the plurality of matches. Specifically the claim sets forth the means for providing the function but no related language for enacting the step of executing the plurality of matches not including the main match. Further it is unclear how the tournament feature of Nakagawa et al could be enacted without inherently simulating the related matches even if the simulation was the outcome of a random determination.

On page 15 the Applicant argues that there is no corresponding output of event content at an event time during the execution of a match. Supporting the Applicant's position the Applicant suggests that the citation of the end of game step previously cited by the Examiner occurs after the game rather then during the game. It is additionally noted however that providing event output at a given time would be additionally provided for by Elm ST610 of Nakagawa.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT MOSSER whose telephone number is (571)272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert E Pezzuto/
Supervisory Patent Examiner, Art Unit 3714

/R. M./
Examiner, Art Unit 3714